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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 CHARLES DOMINICK LOMBINO,
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10 Plaintiff,
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12 v.
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14 BANK OF AMERICA, N.A., et al,
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16 Defendants.
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18 _____
19 and related Counterclaims.
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2:09-cv-0036-LDG-RJJ

ORDER

21 Defendants have filed a motion in limine requesting an order “(a) precluding any references
22 at trial relating in anyway to any communications involving the State Bar of Nevada, and
23 precluding David Clark, who is counsel for the State Bar of Nevada, as a witness in this matter, (b)
24 precluding Plaintiff from calling any witnesses and offering any exhibits that Plaintiff did not list
25 in the Pretrial Order [Document # 45], and (c) precluding Andrew West as a witness in this
26 matter.” Defs.’ Mot. In Limine 1-2, Nov. 5, 2010, ECF No. 58. This court granted Defendants’
motion at oral argument (#66). After further review of the issues presented, however, this court
vacates its previous order and orders as set forth herein.

Defendants argue that this court should preclude reference to any communication with the
State Bar of Nevada (“State Bar”) because Defendants had a duty to report the overdraft of
Plaintiff’s IOLTA account to the State Bar pursuant to Nevada Supreme Court Rule 78.5 and that

1 they enjoy civil immunity for such communications pursuant to Rule 106. Defendants, however,
2 have failed to conclusively demonstrate that they enjoy immunity for any Rule 78.5 report
3 pursuant to the civil immunity granted in Rule 106(1). *See Nev. Sup. Ct. R. 78.5(3), (7); 106(1).*
4 Furthermore, Plaintiff argues that his own communications with the State Bar that preceded
5 Defendants' overdraft report are relevant to demonstrate his good faith in handling the forged
6 check. *See Pl.'s Opp. to Defs.' Mot. In Limine 2, ECF No. 61.* Therefore, in light of these issues,
7 the court denies Defendants' motion to preclude any reference to communications with the State
8 Bar.

9 Defendants also argue that this court should limit Plaintiff's witnesses and exhibits to those
10 listed in the Pretrial Order and preclude the testimony of Andrew West. *See LR 16-3(d).* The
11 Pretrial Order listed four Plaintiff witnesses (West, Clark, Poli, and Aberman) and indicated that
12 Plaintiff's exhibits were "[t]o be provided." Joint Pretrial Order 9, 12, April 12, 2010, ECF No.
13 45. Plaintiff now intends to introduce three witnesses (Lombino, West, Clark) and thirty-five
14 exhibits. *See Pl.'s Witness List 2, ECF No. 71; Pl.'s List of Exhibits 2-8, ECF No. 72.*
15 Defendants have deposed Plaintiff and cannot argue any surprise or prejudice by his anticipated
16 testimony at trial. Surprise or prejudice is also unlikely as to Plaintiff's exhibits because most
17 were either included in Plaintiff's Pretrial Order (#33) or overlap with those listed by Defendants.
18 Additionally, Defendants apparently consented in the Pretrial Order that Plaintiff's exhibit list was
19 "[t]o be provided" at some unspecified future time and have waited months to assert their position.
20 Furthermore, Defendants' failure to either reschedule Andrew West's deposition or contact the
21 court regarding the issue, coupled with his available affidavit, undermines Defendants' concerns of
22 prejudice by hearing Andrew West's testimony at trial. Accordingly,

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24 THE COURT HEREBY ORDERS that its previous order granting Defendants' motion in
25 limine (#66) is VACATED.
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1 THE COURT FURTHER ORDERS that Defendants' motion in limine (#58) is DENIED.

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3 DATED this 2 day of December, 2010.

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Lloyd D. George

7 United States District Judge
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